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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE MEDIATOR/ARBITRATOR

In the Matter of the Petition of:	Case 11 No. 35361 MED/ARB-3394
CASHTON EDUCATION ASSOCIATION	Decision No. 22957-A
To Initiate Mediation/Arbitration Between Said Petitioner and	Sherwood Malamud Mediator/Arbitrator
CASHTON SCHOOL DISTRICT	

APPEARANCES

Gerald Roethel, Executive Director, Coulee Region United Educators, 2020 Caroline Street, P.O. Box 684, La Crosse, Wisconsin 54601, appearing on behalf of the Association.

David R. Friedman, Attorney at Law, Room 802, 30 West Mifflin, Madison, Wisconsin 53703, appearing on behalf of the Municipal Employer.

On October 16, 1985, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Mediator/Arbitrator to attempt to mediate issues in dispute between the Cashton School District, hereinafter the Employer, and the Cashton Education Association, hereinafter the Association. If mediation should prove unsuccessful, said appointment empowers the Mediator/Arbitrator to issue a final and binding award pursuant to Sec. 111.70(4)(cm)6.c. of the Municipal Employment Relations Act. A mediation session was conducted on January 6, 1986. The mediation session proved unsuccessful. The arbitration hearing in the matter followed immediately subsequent to the mediation on January 6, 1986. At the hearing, the parties presented documentary evidence and testimony. The parties submitted briefs and reply briefs which were exchanged through the Mediator/Arbitrator by February 26, 1986. Due to the illness of the Arbitrator, the parties were advised that a decision in this matter would be delayed. Based upon a review of the evidence, testimony and arguments submitted, and upon the application of the criteria set forth in Sec. 111.70(4)(cm)7.a-h Wis. Stats., to the issues in dispute herein, the Mediator/Arbitrator renders the following Arbitration Award.

SUMMARY OF THE ISSUES IN DISPUTE

1. Salary Schedule 1985-86 School Year

Association Offer: BA Base of $14,830 at the BA Base. The Association proposes to increase the increment paid for experience from $425 to $480 per step on the 15 step 7 lane salary schedule. The Association proposes to increase the differential between the lanes from $345 to $380.

Employer Offer: The Employer proposes a base of $15,000. It proposes to maintain the increment for experience and the differential between lanes reflective of educational achievement both at the same levels in effect for 1984-85 which is $425 for the increment and $345 for the lanes.

Both the Employer and the Association provide for a cumulative longevity of $230 per year for each year a teacher is above the top step in their respective lane. In addition, both proposals provide for the same 15 step 7 lane salary schedule.

2. Extracurricular Schedule:

Association Offer: Increase the amounts listed for each extracurricular activity by 8.35%. The cost of the Association proposal is $2,710. The mileage reimbursement is listed on the schedule. The Association proposes to maintain the mileage reimbursement at the 1984-85 level of $ .23 per mile.

Employer Offer: The Employer proposes to increase the level of pay for extracurricular activities by 7.1%. The cost of this increase would amount to $2,308. However, the Employer proposes to reduce the mileage reimbursement from $ .23 to $ .20.5 per mile.

The total dollar difference between the parties on the issue of extracurricular activity reimbursement is $402. The Association and the Employer have agreed that the issue of extracurricular activities, with the exception of mileage will not be determinative or considered by the Mediator/Arbitrator in his selection of the final offer to be included in the 1985-86 Agreement.

3. Insurance

Association Offer: The Association proposes to maintain and carry forward the language on insurance found in the 1984-85 Agreement.

Employer Offer: The Employer proposes to add the following paragraph to Article VI.G.:

> The Board's only obligation in furnishing all forms of insurance is to pay for the insurance premiums. By contracting for insurance, the Board does not incur any other obligations than paying the premium.

STATUTORY CRITERIA

The criteria to be used for resolving this dispute are contained in Sec. 111.70(4)(cm)7, as follows:

Factors considered. In making any decision under the arbitration procedures authorized by this subsection, the Mediator/Arbitrator shall give weight to the following factors:

a. The lawful authority of the municipal employer.
b. Stipulations of the parties.
c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.
e. The average consumer prices for goods and services, commonly known as the cost-of-living.
f. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective

bargaining, mediation, fact-finding arbitration or otherwise between the parties, in the public service or in private employment.

BACKGROUND

The Cashton School District comprises an area, the bulk of which is located in Monroe County with portions of the district located in LaCrosse and Vernon Counties in the Southwestern portion of Wisconsin. The Employer notes in its brief that this is the fifth occasion on which the parties have employed the procedures of the mediation/arbitration law in resolving their disputes. On two occasions, the parties reached agreements through the efforts of the Mediator/Arbitrator. Several terms and conditions of the 1978-80 Agreement were determined by Mediator/Arbitrator David Johnson. Similarily, under a reopener on economic items for the 1982-83 school year, Mediator/Arbitrator Neil Gundermann issued an award on the economic issues presented to him. Both Johnson and Gunderman had an opportunity to discuss and refer to school districts which they found to be comparable to Cashton. However, by the time the record was closed in this proceeding, school districts identified by Arbitrators Johnson and Gundermann as primary comparables, those included in the Scenic Bluffs Athletic Conference, none had settled for the 1985-86 school year. In fact, data was unavailable for one school district member of this athletic conference for the 1984-85 school year. As a result, much of the parties argument in this case focuses on the comparability issue and the weight to be given to the comparability criterion in light of the absence of settlements or awards for the 1985-86 school year for districts who are members of the Scenic Bluffs Athletic Conference.

POSITIONS OF THE PARTIES

The Association Argument

The Association maintains in its argument and in its presentation of evidence that the comparability criterion should remain the criterion which is afforded the greatest weight by the Mediator/Arbitrator in his determination of the final offer to be included in the parties' Agreement. The Association has presented data with regard to four comparabilty groups. The first comparability group includes school districts located within 30 miles of Cashton. The district's proposed as comparables by the Association which are within a 30 mile radius of Cashton and which have settled for the 1985-86 school year are: La Crosse, La Farge, North Crawford, Onalaska and Viroqua.

The second comparable group identified by the Association are school districts which are located within a 75 mile radius of Cashton. The District's proposed as comparables in this grouping have agreements in place for the 1985-86 school year, and they are: Alma, Barneveld, Black Earth, Boscobel, Cochrane-Fountain City, Fennimore, Gilmanton, Iowa-Grant, La Crosse, La Farge, Nekoosa, North Crawford, Onalaska, Osseo-Fairchild, Pittsville, Sauk-Prairie, Viroqua, Westfield and Wisconsin Rapids.

In the third grouping of comparables, the Association notes that ten arbitrators have issued decisions either in Scenic Bluffs Athletic Conference school districts or in other school districts in which they have referred to a Scenic Bluffs Athletic Conference school as a comparable to that school district. The Association has analyzed the decisions of these ten arbitrators and through this process has identified 28 school districts where either a Scenic Bluffs Athletic Conference school district has been compared to a non-conference school or where a non-conference school has been compared to a conference school. These districts are as follows: Tomah, Sparta, Baraboo, Reedsburg, Richland Center, Black River Falls, Wisconsin Dells, Mauston, Nekoosa, Elroy-Kendall-Wilton, Westfield, Tri-County, Pittsville, De Soto, New Lisbon, North Crawford, Hillsboro, Cashton, Bangor, Necedah, Seneca, Norwalk-Ontario, Kickapoo area, Wonewoc, Wauzeka, Weston, Ithaca and La Farge.

As a fourth comparability grouping, the Association asserts that statewide averages at the benchmarks should be used by the Mediator/Arbitrator in his consideration of the issues in this case. The Association cites with approval the observation made by Arbitrator Kerkman in Weston Schools (21307-A) 8/84, in which he rejected the use of state averages as a direct means of comparison. But, he went on to say that:

> While the exact comparisons, however, are inappropriate (using statewide averages), in view of recognized geographic differences in salary levels that have historically been in place, the undersigned considers it appropriate to measure whether or not there has been further erosion from the statewide average which has occurred in the instant geographic area. Furthermore, while the undersigned has excluded from the comparables for the purposes of direct wage comparisons the larger school districts which are contiguous to the instant district, the undersigned also considers it appropriate to determine whether or not there has been erosion of salaries from the instant employer as compared to the larger school districts which are contiguous.

The Association concludes that the use of these four comparable groups will permit the Arbitrator to provide direction to the instant proceeding. Furthermore, the Association maintains that the use of these comparable groups will provide direction in the current round of bargaining.

After presenting its position on the comparability issue, the Association then turns its argument against the Employer's proposal for inclusion of new language in the insurance Article VI of the Agreement. The Association charges that the Employer attempts through its proposal to absolve itself of any responsibility for the administration of a health insurance program, yet, it is the Employer which has the sole responsibility for selecting a carrier under Article VIG of the Agreement. In the Association's view, the Employer is repsonsible for the accomplishment of several tasks with regard to the health insurance program. It must enroll employees in the health and life programs. The Employer must forward the correct amount of premium to the insurance company. It must insure that the coverage provided is that contracted for in the Collective Bargaining Agreement. It is the Employer's responsibility to enforce the contract between the health insurance company and the employer for the provision of health insurance coverage to employees. Under the Employer's proposal, it absolves itself from all but the responsibility of paying the premium to the insurance company.

The Association argues that the Employer has been unable to point to or demonstrate any particular problem in the administration of the health insurance program in Cashton which justifies the inclusion of this new language. The Association anticipates the argument raised by the District with regard to the grievance arbitration which occurred in the Janesville School District. In that case, the carrier unilaterally changed its interpretation of what is "usual and customary charges" which it covers in its insurance plan. The Arbitrator in that case directed the District to sue the insurance company. The reviewing court directed that the Arbitrator remedy the violation by reimbursing employees the difference between the lower coverage provided by the insurance carrier and the one contracted for under the "usual and customary" definition intended by the Collective Bargaining Agreement. The Association argues that under the Employer Proposal, an individual employee would have to sue the carrier where the carrier refuses to pay a medical bill. The Association argues that this proposal standing by itself is so destructive of the insurance provisions that it alone provides justification for the selection of the Association's offer for inclusion in the Agreement.

On the mileage issue, the Association notes that the Employer has failed to provide any evidence that other districts have proposed a reduction of the mileage reimbursement to 20.5 cents. In fact, the Association notes that the IRS now permits 21 cents per mile for automobiles used for business purposes.

The fact that the Employer reimbursement exceeds the IRS allowance by 2 cents per mile means that employees may be taxed on the 2 cents per mile additional reimbursement. The Association concludes that on this issue, its offer is the one which should be included in the 1985-86 Agreement.

On the salary issue, the Association's argument is based on the three comparability groups. In this regard, the Association notes that on the 7 benchmark analysis, a comparison of salary levels at each of the benchmarks demonstrates that except for the BA Base and MA Minimum, the Association proposal is closer to the mark on the other benchmarks. When the dollar increase at each benchmark is compared for each of the comparability groups, the Association offer is closer to the mark at all 7 benchmarks for the comparable school districts which lie within 30 miles of Cashton. Except for the BA 7th Step and BA Maximum, the Association offer is closer to the mark for the comparability group of districts located within 75 miles of Cashton. Finally, with regard to the comparabilty group of 28 districts identified by Arbitrators as a comparable to a Scenic Bluffs school, the Employer proposal is closer to the mark at the BA 7th Step, BA Maximum and MA Minimum. The Association offer, in the Association's words, wins at the other four benchmarks.

The Association criticizes the Employer salary schedule proposal in that most of the Employer's effort is placed in increasing the BA Base benchmark. The Association maintains that the rest of the salary schedule should be increased, as well. The Association notes that during the 1984-85 school year, the cost of health insurance increased by 46.44% or $21,134. However, for the 1985-86 school year, the premium cost declined by 9.09% or $6,323. The Association maintains that the savings in health insurance premiums further justifies its proposal.

The increment for experience plays a major role in determining the salary levels paid under the particular schedule. In Chart 6, in its brief, the Association demonstrates that the increment in Cashton is the lowest among the Scenic Bluffs Athletic Conference schools.

CHART 6

Bangor
  Association 455-475
  Board 460-480
Cashton 425
Elroy 460
Hillsboro 443
Necedah 450
New Lisbon 425-465
Norwak-Ontario 490
Wonewoc 430

The Association then demonstrates the impact of the increment at the various benchmarks over the period of 1981-82 through 1984-85. The result is that the salary level at each of the benchmarks in Cashton in 1981-82 as compared to statewide averages, range from 87% to 96%. By 1984-85 the range was from 78% to 92% of the statewide salary level at each of the 7 traditional benchmarks.

The Association charts the decline in the ratio of the BA Base to Schedule Maximum of the Cashton salary schedule from the period of 1981 through 1984-85. In this regard, the ratio of bottom to top declined from 1.62 to a ratio of 1.59. Under the Association proposal for 1985-86, the ratio would be 1.61. Under its proposal, the Association maintains that the relative stability of this figure would be restored. Under the Employer proposal for 1985-86, the internal salary schedule ratio would percipitously decline from 1.59 in 1984-85 to 1.53. The Association concludes that its salary schedule is the better schedule, especially in light of the incredibily

low salary increase provided to the teachers of Cashton as a result of large insurance increases experienced in this school district.

A review of the Association application of the eight statutory criteria to its proposal follows.

Neither the Association nor the Employer raised any argument with regard to the lawful authority of the Municipal Employer or the Stipulations of the parties which would serve to distinguish one offer from the other. With regard to the interest and welfare of the public criterion, the Association notes that there was no public hearing, in this case. The Association concludes that the public is not opposed to its offer. The Association maintains that the Employer has not raised the financial inability to pay argument. It notes further that the levy rate in Cashton is below that of comparable school districts.

The Association notes further that the State of Wisconsin has provided the Cashton School District with $136,185 in new state aids for the 1985-86 school year. Under the cast forward costing analysis used by both the Association and the Employer, the Association's offer costs $86,674. The actual dollar cost of the Association proposal will be less than this amount. As a result, there will be monies available for the Board of the Employer to reduce property taxes.

The Association asserts that newspaper articles with regard to the farm economy have no place in an arbitration proceeding. The Association acknowledges the problems faced by farmers. However, it argues that those problems should not be borne by teachers. The Association notes that by the close of the record in this case in February, 1986, well over one-third of the teachers in the state are working under settled contracts. The Association urges the Arbitrator to consider the pattern of settlements in determining the salary schedule to be included in the 1985-86 Agreement. In this regard, the Association quotes extensively from the decisions of Arbitrators Rothstein in Florence County Schools, (19382-A) 9/83; Vernon in Mercer Schools, (20018-A) 5/83; Yaffe, in Tomahawk Schools, (20146-A) 7/83 who stated that:

> Further support for the reasonableness of the Association's salary proposal may be found by virtue of the fact that the record is totally void of any evidence or argument demonstrating that the District is distinguishable from comparable districts on the basis of the state of the local economy or based upon the District's relative ability to support its educational program. Absent pursuasive evidence in this regard, comparability is clearly the most significant criteria to consider in determining the relative reasonableness of the parties' final salary offers and in that respect, the Association's proposal is clearly the more reasonable of the two submitted herein.

The Association excerpts quotes from the Awards of Arbitrators Petrie, in New London Schools, (20101-A); Zeidler, in Watertown Schools, 20212-A; Krinsky, in Ladysmith Schools (19803-A); R. U. Miller, in Plat Elementary, (20292-A); Fogelberg, in Wonewoc, (19985-A); and Imes, in Brillion Schools (21079-A). The Association notes that all of these arbitrators have issued awards when the state of the farm economy has not been the best. Nonetheless, these arbitrators have based their decision on the pattern of settlements rather than on the general state of the economy. The Association further argues that there is a forecast of a teacher shortage. Its offer provides for an attractive compensation package which may be used by the Employer in competing for good qualified staff for the future. With regard to the comparability criterion, the Association notes that only two of the seven contiguous school districts, namely, La Crosse and La Farge have settled for 1985-86.

The Association demonstrates through Chart 10 in its brief, the decline in rank at each of the Benchmarks suffered by the Cashton teachers. The Association notes that in 1981-82, the Cashton teachers ranked in the middle

of the 3 comparable groupings identified by the Association. The Association concludes that the inclusion of the Employer offer would only further erode the rank of the salary paid to Cashton teachers.

On the cost of living, the Association submitted evidence that demonstrates that the salary levels at the Bachelor's Maximum, for example, is $133 less that it would be if teachers had been paid the cost of living over the same period of time.

The Association argues that the measure of the cost of living is not the CPI published by the Bureau of Labor Statistics. Rather the CPI is best reflected in the level of settlements achieved by teachers on a statewide and areawide basis. In this regard, the Association cites the decision of Arbitrator Robert J. Mueller in North Central VTAE (18070-A) 1/81. That decision concerned a paraprofessional unit. In Kewaskum (17981-A) 2/81, a decision in a teacher unit case, Mueller stated that:

> Undoubtedly the CPI did receive consideration and play a part in the negotiations between the parties and all other districts. The percentage settlements that were arrived at at such other districts, can reasonably be presumed to have taken into consideration the cost-of-living increase and the level of settlements would in effect reflect the amount of consideration that other districts have given to that factor. In the final analysis, it would seem that the comparison as to the relative standing of the salary structure in this district is more relevant through comparison with other districts as to determine their reasonable and relative standing. Such consideration, of course, does include those other individual factors which go into determining the level of settlement which in fact would include cost-of-living increase.

The Association goes on to cite other arbitrators such as Kerkman in Merrill (17955-A) 1/81; R. U. Mueller, in Marathon Schools, (18110-A) 1/81; Imes in Sheboygan Falls, (18376-A) 7/81; Vernon Hilbert Schools (19198-A) 5/82 and Fleischli in Drought Schools (21497-A) 10/84; Fogelberg, in Wonewoc Schools, 19985-A) 5/83; Flagler in Prairie Farm (20218-A) 5/83. The Association concludes this discussion by indicating that strict adherence to the CPI measurements published monthly may result in awards which diverge from the pattern of settlements, as well as, from the market conditions which impact upon a particular occupation.

With regard to the criterion of overall compensation, the Association charts the change in insurance rates from 1984-85 to 1985-86. It then applies these changes to the increases at the Benchmarks for the districts located within 30 miles of Cashton. The Association notes that for this comparability group, only at the BA Base is the Employer proposal closer to the average than that of the Association. Again, when this method is used for the comparables generated on the basis of Arbitral analysis, the Employer's offer is closer at the MA Minimum, but diverges substantially more than that of the Association at the other benchmarks. In this regard, the Association notes that many of the other comparable school districts have dental insurance and long term

Employer Response

The Employer urges the Arbitrator to resist using make shift comparables in reaching his decision in this matter.

The Employer maintains that the Association does not comprehend its insurance proposal. The Employer has two obligations with regard to insurance. First, it has an obligation under the Collective Bargaining Agreement with its employees. Secondly, it has an obligation under its contract with the insurance carrier. The Employer acknowledges that it has entered into a fudiciary relationship with its employees by entering into a health insurance contract with a carrier. The Employer does not acknowledge that the Association would have the right to enforce the insurance contract through the grievance procedure. The Employer asserts that its proposal merely makes explicit its obligation to its employees under the Collective Bargaining Agreement. The Employer asserts that the language it proposes does not eliminate the obligations claimed eliminated by the Association. The Employer's proposal supplements the already existing contract language by detailing the benefit provided by the Employer. The employees are thereby given full knowledge of the scope of the benefit provided by the Employer. With regard to the grievance litigated in Janesville Schools, the Employer notes in its brief that it would be pure speculation to predict whether another Arbitrator would reach the same conclusion as the Arbitrator in Janesville. In that case, the Arbitrator determined that it was the Employer's obligation to reimburse the difference between "usual and customary" level of benefits provided for under the Collective Bargaining Agreement but not fully paid for by the Employer's insurance carrier. It is the purpose of the proposal in this case to avoid the litigation and the dispute which arose in Janesville.

The Employer Argument

The Employer argues that for better or worse the parties in Cashton have relied upon the processes of the mediation/arbitration law to resolve their disputes. This is the fifth Mediator/Arbitrator to be involved in contract negotiations between these parties. The Employer urges that despite this involvement of a third party, the parties have adapted their relationship to the law and have established a stable relationship in that regard. In order to maintain that stability, the Employer urges this Arbitrator to use the districts identified by the predecessor mediator/arbitrators David B. Johnson and Neil Gundermann as the comparables on which this decision for 1985-86 should be determined. The Employer cites from the decision of Arbitrator Gundermann in his rebuff of the Association's attempt to expand the comparables to include CESA 11 School Districts:

> While it is true that in some cases arbitrators relied on CESA areas to draw comparables, it appears that in the preponderance of the cases, the Arbitrators have more narrowly defined the areas of comparables, frequently relying upon an athletic conference in which to draw the comparables. Where, as in this case, the parties previously relied upon the athletic conference(s) to draw the comparables, the undersigned can find no basis for expanding comparables to CESA 11. In the opinion of the undersigned, the comparables used by the parties previously, the athletic conference, are appropriate to use in this case.

At the time of the hearing before Arbitrator Gundermann, only two of the schools in the Scenic Bluffs Athletic Conference were settled. Yet, Arbitrator Gundermann did not expand the comparables as urged by the Association in that case. The Employer emphasizes that an expansion of the comparables in this case would only serve to undermine the predictability that has been established in the Collective Bargaining relationship between the parties. By switching comparables, the Arbitrator would make it even more difficult for the parties to reach a voluntary agreement. The Employer urges that:

> Comparability shopping may be good mediation-arbitration strategy, but it is not good bargaining strategy. Mediation-arbitration is to be the last step in the bargaining process-the resolution of an unresolved dispute. Mediation-arbitration should not be used as the end of all bargaining.

For its part, the Employer then cites the decisions of other arbitrators who were faced with few settled comparable school districts when making their award. The Employer notes that in those situations, the arbitrators rendered an award using the remaining seven of the eight criteria as a basis for their decision. In this regard, the Employer cites the decision of Arbitrator Petrie in Valders School District (19804-A) 5/83.

The Employer notes that the first comparability grouping used by the Association is one which includes all school districts settled and which are located within a 30 mile radius of Cashton. The districts picked up in this sweep are La Crosse, which is 12 1/2 times the size of Cashton. Onalaska, which is 4 times the size of Cashton. Viroqua, which is twice the size of Cashton. Only North Crawford and La Farge approach the size of the Cashton School District. The Employer also disputes the comparability group comprised of districts proported to be within 75 miles of Cashton. The Employer points to the testimony of the Cashton administrator who noted that Barneveld by road is 102 miles from Cashton. The Employer concedes that crows and compasses may find that Barneveld is 75 miles from Cashton. The Employer rejects the 102 mile and 75 mile grouping. A comparability implies a labor market approach. Persons ordinarily do not view a 102 mile drive as a commute. Whereas, they may commute 30 to 40 miles.

The Employer rejects the third grouping used by the Association, that of analysis of arbitration awards. The Employer reviews each of the decisions referred to by the Association. The Employer urges this Arbitrator to reject any inclination to add to the list of comparables based on the fact that there is insufficient data available in the primary group of comparables. It takes this position, although arbitrators such as Yaffe have used this approach to supplement the identified comparability grouping where sufficient data is unavailable in that grouping. The other difficulty which the Employer points to in using the decisions of arbitrators as a basis for expanding the group of comparables is that these arbitrators have had to fashion the particular appropriate comparability grouping in relationship to arguments presented by the parties. The Employer concludes that it is best for the bargaining process for this arbitrator to use the same set of comparables used by other arbitrators for this district. The Employer maintains that the process of using districts that were used as comparables to other schools to expand the comparability grouping when carried to its logical conclusion would result in comparing Cashton to Milwaukee County.

On mileage, the Employer notes that at the time its proposal was put together, the Internal Revenue Service allowed 20.5 cents per mile. Only afterwards did the IRS raise that to 21 cents per mile. The Employer's position is based on a fact that the 2 cent difference between that reimbursed by the district and allowed by the IRS must be declared as taxable income.

On the insurance issue, the Employer proposes to amend the language for the sole purpose of preventing a grievance arbitrator from ordering the Board of the District to commence litigation on behalf of an employee when such an order would be beyond the scope of the grievance arbitrator's authority. The Employer notes that under the Collective Bargaining Agreement it has an obligation to employees. It has a separate responsibility when it contracts with an insurance carrier. That responsibility is separate and distinct from its Collective Bargaining Responsibilities. The Association assumes that it has the right to enforce through the grievance procedure the underlying insurance contract. The Employer is not sure that the Association has that right. The Employer notes that liability insurance language contained in Article VI does not specify the level of benefit afforded employees under the

plan. Similarily, the purpose of the language which the Employer proposes is to clarify the Employers obligation with regard to health insurance. The language does not serve to denigrate the benefits afforded to employees. The Employer's language clearly indicates that it is not obligated to cover accidents or events which are beyond the scope of the insurance plan or schedule of benefits. The proposal of the Employer fills in gaps left by the current language of the agreement. The Employer concludes that its proposal on insurance is reasonable.

With regard to the salary schedule, the Employer argues that the Association proposal contains a change in structure. The Association proposes to change the column differentials from $345 to $380 and the experience increment from $425 to $480.

The Employer has proposed a $15,000 BA Base salary in order to keep salaries for new teachers competitive with other districts. The increments were not increased because the Employer believes that the salary schedule at the maximums is not out of line with what is paid by surrounding districts.

The Employer charts in Chart 2, in its brief, the longevity paid in Cashton and compares that with the level of longevity paid in other Scenic Bluff Conference schools such as Bangor, Elroy-Kendall-Wilton, Necedah and New Lisbon which also provide for longevity payments. Without longevity, the Cashton level of salary paid at the BA Maximum is $442 below the average of the other Scenic Bluffs Athletic Conference Schools which comprise Bangor, Cashton, Elroy-Kendall-Wilton, Hillsboro, Necedah, New Lisbon, Norwalk and Wonewoc. However, when longevity is added, then the level of salary received by teachers in Cashton is $1,106 above the comparable districts, in 1984-85. Using the same methodology and the same school districts, the Employer emphasizes that at the MA Maximum without longevity, the Cashton salary is $957 below the average in 1984-85. However, with longevity it is $200 above the average.

The Employer notes that the heart of any mediation-arbitration concerns what the employees are to be paid. The Employer cites extensively from the decision of Arbitrator Petrie in School District of Valders (19804-A) 5/83 wherein he noted that were there are few comparable settlements available, then the private sector data assumes greater importance. Furthermore, in dealing with the catch up argument presented in the Valders case, Petrie noted that in the prior year, the parties had reached a negotiated settlement. He stated that:

> It is highly unusual for either of the parties, in the context of a wage or benefits reopener, to be urging arbitral consideration of factors which pre-dates the last negotiated settlement . . . an interest arbitrator would normally look to cost of living and to relate catch up arguments only from the date that the parties last reached a negotiated settlement.

The Employer notes that it has offered a total package of 7.24%. The salary portion alone is 8.54%. It is only the decrease in health insurance rates which brings down the cost of the total package. The Employer asserts that even if La Crosse is looked to as a basis for comparison, this data shows that the increase in pay in the private sector in the City of La Crosse is $472. The increases afforded under the Employer's proposal which is no less than $700 fairs well against this data. The Employer emphsizes that there is a farm crises. The state of the economy and agriculture has a profound effect in Cashton. The taxpayers of this school district will not be receiving wage and benefit increases the size that is offered by the Employer in this case. The Employer anticipates the argument of the Association that it is entitled to catch up. But the Association reached a voluntary agreeement through the offices of Mediator/Arbitrator Yaffe for the 1984-85 school year. The Association settled at the pattern of 8.41%. That total package included a large increase in insurance rates. It is troubling, the Employer maintains, for the Association to now come before this Arbitrator and argue for a catch

up increase. The Employer argues that if the Association wants a catch up increase, it should litigate on that basis. However, the Employer adds that there is nothing indicating that the increases provided in other districts in this year are anywhere close to that demanded by the Association, here. The Employer maintains that any decision on catch up should await a more appropriate time in the bargaining relationship in which such a demand may presumably be granted. The Employer concludes that the absence of comparables does not preclude the Arbitrator from rendering a decision, in this case. There are seven other factors on which a decision may be based. When this arbitration is viewed in light of the plight of the farmers, the budget crunch brought about through state and federal budgets and the level of raises which employees are receiving in the private sector, the Employer concludes that its offer will be found to be fair and reasonable.

The Association Response

The Association argues that although there are no settlements in the Scenic Bluffs Athletic Conference, there are settlements in the immediate area. Six school districts which lie within 30 miles of Cashton have settled and 19 school districts which are located within 75 miles of Cashton have settled for 1985-86.

The Association acknowledges the reason for the acceptance of athletic conferences as a comparable basis, stems from the fact that athletic conferences normally comprise school districts which are proximate to each other in geography, size and interschool relationship. The Association argues that it does not wish to change the comparable base for Cashton. The Association would refer to settlements in the Scenic Bluffs Athletic Conference, were there any. The purpose of the Association argument is to provide a picture of what has occurred in the bargaining process in Wisconsin for the 1985-86 school year. In this regard, the Association cites the decision of Arbitrator Vernon in New Lisbon, supra, who observed that had six of the seven school districts settled as they had at the time Arbitrator Michelstetter made his decision, he too would have limited the comparables to the athletic conference. In New Lisbon, Vernon added eleven additional schools to the comparability pool. The Association maintains that Cashton competes with all the districts mentioned by Vernon in his New Lisbon decision which includes Pittsville, Nekoosa, Tri-County, La Farge and Westfield for the best teachers available. The Association notes that La Farge and North Crawford which were part of Cashton's former conference were considered by Arbitrator Johnson in his award in Cashton. With regard to Viroqua, its size is similar to that of Elroy-Kendall-Wilton, a Scenic Bluffs Conference School. Furthermore, the Association notes that La Crosse and Onalaska are contiguous to Cashton. The Association, in its reply brief, makes a benchmark analysis of the North Crawford and La Farge settlements using the eight benchmarks used by this Arbitrator. Under that analysis, the Association notes that its offer is closer to the average at seven of the eight benchmarks. If insurance costs, the decrease in premium is included in the picture, then the Association position "wins" on seven of the eight benchmarks and is below the average on five of the eight benchmarks. The Association maintains that in the arbitration decisions cited in its exhibits 102 and 103, arbitrators expanded the comparables in situations where there were three settlements. Here, the Association has engaged in the same exercise because there are no conference settlements. The Association takes exception to the analysis of the Employer wherein it carries the analysis of the Association's use of school districts referred to by Arbitrators as a basis for extending the comparison from Cashton to the Milwaukee suburbs.

The Association argues that there has been no litigation in Cashton which justifies the change in insurance language proposed by the Employer. In fact, there are no comparables for the language proposed by the Employer. The error made by the Arbitrator in Janesville, according to Judge Farnum, was the method used for enforcement. He did not disagree with the conclusion reached by that Arbitrator that the school district of Janesville was responsible for paying the difference between the usual and customary levels promised in the

Collective Bargaining Agreement as compared to those paid by the insurance carrier. The Association argues strenuously that the Employer proposal does denigrate the level of benefits afforded to teachers of Cashton. The Association believes that the Employer proposal, if included through an arbitration award in the 1985-86 agreement will prevent lawsuits and eliminate Employer liability. It will not fill gaps and clarify the language. The elimination of liability will be accomplished in the absence of any demonstration for the need for this language.

On the salary schedule issue, the Association denies that it is changing the salary schedule structure. In its view, it merely seeks to increase the level of the increments paid for experience and for additional educational achievement. The Association maintains that the Employer's chart on longevity contains several misrepresentations. It asserts that longevity was first included in a Bangor agreement in 1982-83. The payments in 1984-85 were $600. In Elroy-Kendall-Wilton, longevity for 1983-84 was $500 and for 1984-85 was $750. In Necedah, the Association maintains that longevity reflects the actual years of experience. A teacher in Necedah is paid an additional increment for each three years beyond 15. With regard to Wonewoc's BA Maximum, the Association asserts that it is $18,785, not $19,785. The Association maintains that a teacher with a master's degree and 18 years of experience in 1984-85 would receive $21,670 in Cashton. Only Wonewoc would pay less at $21,075. All other conference schools would pay such a teacher more than a teacher in Cashton. Furthermore, the Association acknowledges that a teacher in Cashton may earn more than $21,670. That is based on experience. One teacher did earn $23,280 for 26 years of experience. But the Association does not see that as justification for an increase at the salary schedule maximum of $1,350.

The Association takes exception to the quote related by the Employer from the arbitration award of Arbitrator Petrie in Valders Schools. In that case, there were no settlements among the comparable school districts. The Association maintains that is not the case here. The Association has proposed four groupings of comparable school districts.

The Association takes exception to the assertion by the Employer that the Association is the cause of the current low salaries. The Association maintains that the arbitration loss suffered in 1982-83 lowerd salary levels. In 1983-84, Cashton was the first to settle. In 1984-85 it was the second to settle. In 1984-85, the Association offered to settle at a figure lower than it would arbitrate. In that case, the Employer accepted the Association's offer. Here, the Associaton offered to settle out a figure lower than the one the Association is arbitrating. The Board rejected that offer.

The Association rejects the Employer's suggestion catch up perhaps, but not this year.

The Association concludes that it has made the best offer which should be included in the 1985-86 Agreement.

DISCUSSION

A central problem in resolving this dispute concerns the absence of any settlements or certified final offers among the other school districts which comprise the Scenic Bluffs Athletic Conference. The Arbitrator resolves this issue first before applying any of the statutory criteria to the issues in this case. The salary schedule offers are then analyzed in light of the eight statutory criteria. The Arbitrator then turns to discuss the mileage and insurance issues. The discussion section of this award concludes with an analysis of the reasons for the selection of the final offer to be included in the parties' Agreement.

Comparability

Much of the arguments of the parties focuses on the comparability issue. The Employer urges the Arbitrator to give little weight to this factor in

light of the absence of data available for 1985-86 from school districts which have been identified by two arbitrators as the comparable districts to Cashton. The Association acknowledges that no data is available for 1985-86 from the school districts other than Cashton which comprise the Scenic Bluffs Athletic Conference. However, the Association maintains that the comparability factor is and must be the key factor in the determination of mediation/arbitration disputes. The Association suggests three comparability groupings for use by the Arbitrator as a direct source for his decision. The Association suggests, as well, a fourth comparability grouping of statewide averages to be used by the Arbitrator as a general indicator or measure to ascertain whether either offer or both offers serve to gain or loose ground relative to the statewide averages at the benchmarks for all school districts in the state.

This Arbitrator rejects both arguments. The Employer assumes in the first instance that both Arbitrators Johnson and Gundermann limited the primary comparables for Cashton to those districts who are presently members of the Scenic Bluffs Athletic Conference. However, that conference has evolved and, in fact, was evolving at the time Arbitrator Johnson issued his decision. In fact, Johnson not only used the six other Scenic Bluffs Athletic Conference school districts who are members of that conference for the 1985-86 school year, but he used and referred to districts who were part of the Scenic Central Conference which included the following additional school districts: De Soto, Ithaca, Kickapoo Area, La Farge, North Crawford, Seneca, Wauzeka and Weston. Further evolution of the athletic conference brought Elroy-Kendall-Wilton and Necedah into the Scenic Bluffs Athletic Conference. As a result, Arbitrator Gundermann made reference to and employed Elroy-Kendall-Wilton and Necedah in his analysis of the parties' dispute in his award in 1983. Consequently, even under the Employer's analysis, there are a total of 15 districts which comprise the primary base of comparables to Cashton. Those districts are as follows:

Present Scenic Bluffs Athletic Conference Schools	Former Scenic Central Conference Schools
Bangor	De Soto
Elroy-Kendall-Wilton	Ithaca
Hillsboro	Kickapoo Area
Necadah	La Farge
New Lisbon	North Crawford
Norwalk-Ontario	Senaca
Wonewoc	Wauzeka
	Weston

Even among this expanded list of comparables, there are but two settlements and/or final offers certified for the school year 1985-86 at the time the record in this matter was closed in February, 1986. The two voluntary settlements achieved in North Crawford and La Farge are in districts which were part of the former Scenic Central Conference. The two settlements standing by themselves do not provide a sufficient data base on which any comparability analysis may be made.

The Employer urges that the Arbitrator resist using other school districts as a comparability data base in his determination of this dispute. On the other hand, the Association, has set forth the three alternative comparability groupings. The first contains school districts within a 30 mile radius of Cashton. The second, includes school districts within a 75 mile radius of Cashton. The third contains school districts in which 10 arbitrators have used a non-conference school as a comparable for a Scenic Bluffs Athletic Conference School or used a Scenic Bluff Athletic Conference school as a comparable in a dispute involving a non-conference school district. In order to respond to the Association argument, it is necessary to

step back to ascertain why the comparability factor is treated by arbitrators as the factor given most weight in arbitral resolution of interest disputes.[1]

The purpose of this proceeding is to provide a termination point through an award upon which this interest dispute may be concluded. Certainly, the disputants, the Association on behalf of its members and the Board of the Employer on behalf of the citizens of the district, are well aware of the cross currents and pressures which not only support but have compelled them to adopt the positions which they have in their final offers. It is through the comparability criterion, no matter how that factor is written, divided, diced or pureed, that one is able to determine how other union bargaining committees and members of school boards facing similar cross currents and pressures have resolved their disputes. An arbitrator who relies upon the decisions made by Union bargining committees and school board members in comparable school districts in her/his imposition of a settlement through an award, relies upon the decisions of many independent decision makers in making this award. The Arbitrator, in that case, is doing no more than imposing the pattern of settlement on a party who has refused to accept that pattern. The Arbitrator has not substituted his personal view of what the settlement should be, when she/he employs the comparability criterion in this fashion.

Certainly, there are other objective factors listed in the statute: seven in number. However, arbitrators recognize, as may be seen from the extensive citations contained in the Association's arguments, that the comparability criterion clearly demonstrates how other decision makers on the Union and Employer side confront and resolve an issue similar to the one in dispute under similar circumstances.

The identification of the comparable grouping establishes the degree of similarity between the disputing parties in a particular case and the school districts to which they are to be compared. Athletic conference schools are used because there is a similarity among these school districts in size as measured by pupil population (average daily membership); faculty (full time equivalencies); tax base as reflected in assessed valuations and tax rates; economic activity as reflected in whether the districts are rural-agricultural or urban in character; and finally, athletic conference schools most often share a geographic proximity which is further heightened by contact on a daily basis as a result of the competition among their student bodies. The greater the similarity among the comparable grouping, the greater the reliance on the comparability as a basis for a decision. Furthermore, once the parties, or an arbitrator have identified a comparability base, it becomes a factor in their bargaining relationship. The statute requires the Arbitrator to compare wages, etc. of employees performing similar services, i.e., teacher to teacher, but it also provides that the wages of other public employee groups in the same community should be used as a comparison. Employees in the private sector for that community and in comparable communities are listed as sources of comparison. In a rural school district such as Cashton, there often are no other public employees to whom a comparison may be made, similarly, there often is no organized private sector employer or employers located in a school district whose employees constitute an identifiable segment of a school district's population or who work for an employer which pays an identifiable portion of the district's taxes.

An arbitrator, in a case such as this, is left with the teacher to teacher, school district to school district comparison as the sole basis for the source of anlaysis for the comparability criterion. However, in order to assure that the comparison is valid, it is important that the comparability group be as similar as possible and large enough so as to permit the

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1. For citation of cases and names of the arbitrators in which these arbitrators have expressed the view that comparability as a factor is to be given the most weight, see the review of the Association's argument, supra.

Arbitrator to draw valid conclusions from the available data. To meet this need, disputing employers and unions have urged arbitrators and arbitrators have accepted the use of primary comparables to meet this need to identify school districts which closely approximate one another in size, tax base, economic character and geographic proximity.

Where data has been found to be lacking, for instance, in an athletic conference comprised of seven schools where only four of the seven have settled, arbitrators have identified secondary comparables to assist in the comparability analysis. These districts are secondary, in that they may differ somewhat in size, tax base, geographic proximity, etc., but not so much as to make these secondary comparable districts disimilar to the one which is the subject of a dispute. The secondary comparables are used to supplement substantial data available from the primary comparables. Secondary comparables may also be used as a measure of direction or the size of an increase to buttress whatever data is available from the primary comparables.

In the view of this arbitrator, however, it is inappropriate to use secondary comparables, such as some of the districts suggested by the Association, and use the data generated from settlements or arbitration awards in these districts as the primary basis for the comparability analysis. The use of secondary comparables, in this manner, serves to supplant the primary comparables. It attempts to transform what is dissimilar and make it similar. For example, the Association suggests that the school district of La Crosse, which is geographically proximate to Cashton, should be a comparable for the analysis in this case, in the absence of data among the primary comparables, even though it is 12 1/2 times the size of Cashton. La Crosse has an industrial and much larger tax base than Cashton. Other than location, the dissimilarites between the two districts are legion. To use La Crosse as a basis for determination of this dispute, would be to rely on a decision making process which is the product of pressures and factors most dissimilar to those present in Cashton. To use a district such as La Crosse or Baraboo to determine this dispute would run contrary to the clear statutory intent of this comparability criterion. For this reason, this Arbitrator has eschewed the use of the secondary comparables suggested by the Association to supplant the unavailable 1985-86 data in his determination of the comparability criterion. In the discussion below, this Arbitrator has used the available data to the extent appropriate in analyzing the comparability criterion. In the section of this discussion concerning the selection of the final offer, this Arbitrator has provided far less weight to the comparablity criterion in light of the absence of sufficient data for the 1985-1986 school year.

The Arbitrator now turns to analyze the three issues in dispute in this case. The first issue to be determined is the:

Salary Schedule

Lawful Authority of the Employer

Neither the Employer nor the Association provided any evidence or argument which would serve as a basis for distinguishing between the final offers of the parties on the basis of the criterion-the lawful authority of the municipal employer.

Stipulations of the Parties

With regard to the stipulations of the parties, again, no arguments were presented in the briefs and reply briefs of the parties which would serve as a basis for distinguishing between their final offers. However, the Employer and the Association have reached an agreement on the health insurance issue. It is part of the stipulation of the agreed upon items to be included in the parties' Agreement. The cost of the health insurance benefit has substantially decreased for the 1985-86 school year. This fact is subject to further and more extensive analysis in the discussion of the comparability criterion and the overall compensation criterion, below.

Interests and Welfare of the Public

The third factor on the list of eight statutory factors is the interests and welfare of the public and financial ability of the unit of government to meet the costs of any proposed settlement. The Employer presents no data and no argument that it is unable to meet the costs to be imposed through the adoption of the final offer of the Association. Aids from the state of Wisconsin for the Cashton School District have increased for the 1985-86 school year by an amount in excess of $136,000. This increase in state aid provides the funding basis for the final offers of both the Association and the Employer. The dispute, here, is over how much of this increase will be used for the purpose of property tax relief and how much is to be used to provide higher salaries for teachers. There is no evidence in this record to indicate that either purpose is inappropriate or would constitute an unanticipated use of the increased state aids. The Employer would use just under one-half of this increase in state aids to fund the increase in salaries. The Association proposes that approximately 62% of the increase in state aids be used to fund the increase in teacher's salaries. The amount of money in dispute, here, is a little over $20,000 for teachers in 38.23 full time equivalent positions.

With regard to the interests and welfare of the public, the Association argues that providing salaries that are competitive to other districts will best assure the ability of the Employer to hire competent teachers. The Association notes that it is predicted that in the future, there will be a shortage of teachers. By providing a competive salary schedule, the district will insure its ability to successfully compete for this dwindling resource.

The record in this case is devoid of any detailed data from the schools of education from which this district recruits which would indicate that, in fact, the supply of teachers available to Cashton in the future will dwindle. Furthermore, there is no data in this record to indicate that announcements of openings in Cashton have gone wanting for qualified applicants. There is no evidence in this record, therefore, on which this arbitrator could conclude that with regard to Cashton, there is a teacher shortage or pending teacher shortage which would dictate the selection of the Association offer.

On the other hand, the Employer has presented extensive data from the Federal Reserve Board of Chicago Agricultural Letter which demonstrates that land values in the area of the State of Wisconsin in which Cashton is located have declined by 10% during the period of July, 1984 through July, 1985. This same source indicates that from July 1, 1985 through October 1, 1985 land values have declined in this area, an additional 1%. The Employer has demonstrated through the July 19, 1985, Agricultural Letter of the Federal Reserve Board of Chicago that the Diary Price Index was down 5% to its lowest level in six years.

This data is significant for a rural agricultrual community such as Cashton in that it indicates the diffulty the Board of the Employer would have in supporting budgetary increases through tax rate increases which are to be imposed on the local taxpayer. As noted above, the positions of both the Employer and the Association are premised upon the significant increase in state aids. However, the above data serves to support a greater use of this state aid increase for property tax relief rather than for higher teacher salaries. The precipituous decline in the value of property which serves as the tax base for school districts coupled with the potential decline in income, evidenced by the decline in the Dairy Product Price Index indicates that the interest and welfare of the public supports the lower taxes to be afforded under the proposal which consumes approximately 50% of the increase in state aids for teacher salaries rather than a proposal which consumes 62% of that increase for that purpose.

Comparability (analysis)

This brings the Arbitrator to the comparability criterion. In his discussion above, the Arbitrator indicated why this analysis is limited in this case to a teacher to teacher, school district to school district comparison. The Associaton proposes an increase in the cost of the salary schedule through an increase of $1,080 in the base, a $55 increase in the experience increment and a $35 increase in the differential between educational names.

The Employer achieves its increase in the salary schedule of 8.54% by increasing the base by approximately 9.9%, but retaining the experience increment and the educational lane differential at the same levels as in 1984-85, i.e., at $425 and $345, respectively. The total package increase and costs generated by the Association proposal is 9.69%. The 1 1/2% difference between the increase in the salary schedule and the total package increase is due to the substantial decrease in the cost of health insurance premiums in the amount of $6,322 which represents a 9% decrease over the premium costs from the previous year. Similarily, the Employer's 8.54% increase in the salary schedule yields a total package increase of 7.24% as a result of the decrease in the cost of the health insurance premium. However, the cost of the health insurance premium increased by 46% for the 1984-85 school year. It is this absorption of the large increase in health insurance costs for 1984-85 in a total package increase of 8.4% for that school year which serves to explain the relatively modest increases at each of the benchmarks generated by the 1984-85 salary schedule in Cashton relative to the average increase at the benchmarks of the 15 comparable school districts as reflected in Chart 4.

It is within the context of the above information, that the proposals of the Association and the District may be considered. In light of the unavailability of the data concerning the 1985-86 school year, a direct comparison or a traditional benchmark analysis for the 1985-86 school year between Cashton and the primary comparables is not possible in this case. However, the data available for 1983-84 and the 1984-85 school years permits the Arbitrator to make the following observations.

First, it is apparent from the 1984-85 salary schedules of the Scenic Bluffs Athletic Conference schools as reflected in Chart 6 in the Association's brief that the range in experience increments is $430-$480. New Lisbon maintains a range of experience increments from $425-$465. Cashton at $425 in 1984-85 is the lowest at the experience increment. Unless these districts reduce the amount of the experience increment, and even if they maintain the increment at the 1984-85 level, one could expect the average of the comparable salary schedules for 1985-86 to generate higher salary levels at the BA, BA Lane, MA and Schedule Maximums in the comparable school districts. Furthermore, an internal analysis of the 1985-86 salary schedule generated by the Employer's proposal indicates that the BA and BA Lane Maximums generate increases of 6.8 to 6.5% respectively in a salary schedule which is increased by 8.54%. There is no indication in the ranking or salary levels of Cashton teachers at the benchmark maximums for the 1984-85 school year as to indicate that the salaries of teachers at the benchmark maximums are above the average. As evidenced by the data in Chart 2, it is apparent that the salaries of teachers in Cashton at the BA, BA Lane Maximum and MA and Schedule Maximums reflect salary levels which are below average at these benchmarks. The distortion generated by the flat $1,350 increase, especially at the benchmark maximums is not supported by the available data.

The Arbitrator has taken into consideration the fact that the longevity in Cashton is cumulative. It permits a teacher with many years of experience and many years at the top of the schedule to earn additional sums through longevity. In this regard, the Cashton schedule does differ from salary schedules which only provide a payment once every three years, albeit, a payment substantially larger than that provided in Cashton or salary schedules with much more limited longevity provisions. Nonetheless, the Arbitrator finds no justification for the distortion produced by the fixed dollar

increase at the benchmark maximums where in a prior year, salaries paid at these benchmarks were below the average paid by the comparable districts.

On the other hand, with the exception of the BA Base, the Association offer generates increases which approximate 10% at the benchmark maximums. Furthermore, arbitration awards and/or settlements for the 15 comparable districts would have to approximate 9 1/2 to 10% above the salary levels at the average of the benchmarks for 1984-85 to generate increases equal to those generated under the Association proposal for 1985-86. It is apparent that the Association not only seeks to project the savings in insurance costs into the salary schedule, but it seeks to recoup a substantial portion of the balance of the increase in health insurance premium which was absorbed in the 1984-85 settlement. The Association seeks to achieve this goal without incurring any additional savings in insurance costs through a decrease in insurance coverage. In other words, the Association seeks to approximate the average for what it believes will be the average increase in salary levels for teachers among comparable districts plus the savings generated by the decrease in cost of health insurance premiums. If the Association offer were limited to these two elements, this Arbitrator would find its offer justified. However, there is evidence based on the size of the increase in the salary schedule that the Association seeks to recoup a substantial portion of the increase in health insurance preimium which it absorbed in the 1984-85 settlement. In other words, the Association wishes to maintain an insurance program which has undergone substantial increase while at the same time generate a substantial increase in salary.

There is some indication in the parties' arguments concerning catch up. In this Arbitrator's decision in Reedsville School District, (22935-A) 3/86, a method for determining the need for catch up was used by employing an indicator identified as the range of settlements:

> The range of settlements is the range which is produced by charting all the settlements at a particular benchmark from high to low. Once the median or midpoint is established, the range from the midpoint to the highest settlement and the range from the midpoint to the low settlement thereby establishes the range of settlement. If the offer of the District consistently fell outside this range, then a catch up argument would be sustained.

A cursory review of Chart 2, which reflects the salary levels at the benchmarks for 1984-85, indicates that the level of salary paid by the Employer may fall below the midpoint, but it falls within the range of settlement. The Arbitrator concludes that the salary levels for 1984-85 do not necessarily dictate the inclusion of any catch up in the salary increase to be paid to teachers in 1985-86.

The Arbitrator finds that the distortive impact of the Employer's proposal at the benchmark maximum and the attempt by the Association to recoup a substantial portion of the health insurance increase in addition to the savings generated by the decrease in premium for 1985-86, balance each other out. In the absence of sufficient data for 1985-86, no other inferences or conclusions may be drawn from the available data. Furthermore, in light of the limited data available, the Arbitrator in the section of this award in which the reason for the selection of the final offer to be included in the parties' agreement is discussed, provides far less weight to this comparability criterion.

Overall Compensation

With regard to overall compensation, in the discussion of the comparability criterion, the Arbitrator set forth the evidence available on this issue. There is little else available to this Arbitrator which would provide any additional basis for distinguishing between the final offers of the Association and the Employer through the use of the overall compensation criterion.

Cost of Living

The Association argues that the best measure of the Cost-of-Living criterion is the level of settlements achieved by comparable school districts. Since there is little data available as to the settlements for 1985-86 by comparable school districts, the cost of living index must be analyzed on its own terms.

The use of the cost-of-living as a factor contains an inherent time lag. In applying the cost-of-living, it is well accepted by negotiators and arbitrators that the increase in the cost-of-living for the year prior to the year at issue be used as a measure of the size of the cost-of-living increase to be applied to the year in dispute.

No matter what index is used, and in the Arbitrator's view, the non-metro index for all urban consumers, is the most appropriate, it increased by 2.5% from August, 1984 through August, 1985. However, no matter what index is used, the Employer's proposal is much closer to the increase in cost-of-living. The Employer's total package offer is approximately three times the size of the increase in the cost-of-living. The Association's offer is four times that increase. This criterion certainly supports the selection of the offer of the Employer for inclusion in the parties' agreement.

Changes in the Foregoing and Such Other Factors

Changes in any of the Foregoing Circumstances and Such Other Factors were not argued by the parties. Furthermore, nothing has occurred from the date of filing of the mediation/arbitration petition to the date of the close of the record in this matter to alter the analysis set out above. These criteria, therefore, do not provide a basis for distinguishing between the final offers of the Employer and the Association.

Mileage

There is no indication in this record as to the number of teachers who receive mileage reimbursement from the Employer. The savings attributed to the decrease in rate from 23 cents from 20.5 cents appears to be minimal. Furthermore, the 20.5 cent rate proposed by the Employer is 1/2 cent lower than that permitted by the Internal Revenue Service for tax purposes. The Employer has provided no data for either 1984-85 or for 1985-86 which would support the decrease in the mileage reimbursement from 23 cents to 20.5 cents.

The Employer justifies the decrease on the basis that at the time the final offer was certified, that was the rate established by the Internal Revenue Service for use of a personal automobile for business purposes. However, if the Employer intended to index the rate of reimbursement to the IRS allowance, it could have done so in its proposal.

Furthermore, there is no evidence to indicate that the cost of operating an automobile through the acutal cost of the purchase of a new automobile, cost of gasoline, insurance and maintenance have decreased to such a level that a reduction in mileage reimbursement is appropriate. No data at all was submitted with regard to justifying the decrease in mileage reimbursement. Accordingly, on the basis of this record, the Arbitratior finds that the position of the Association is to be preferred on this issue.

Insurance

The Employer proposes to add the following paragraph to Article VIG to the parties' Agreement:

> The Board's only obligation in furnishing all forms of insurance is to pay for the insurance premiums. By contracting for insurance,

the Board does not incur any obligation other than paying the premium.

The Employer justifies the inclusion of this paragraph on the basis of a grievance and an appeal from the award of an Arbitrator which occurred in the Janesville School District. In that case, a grievance arbitrator directed as part of a remedy that the School Board sue its insurance carrier. The Janesville School District was found to have violated the Collective Bargaining Agreement where the insurance carrier unilaterally changed the method in which it computed the "usual and customary charges" which it would pay for under the policy.

The Employer has shown no evidence that the health insurance carrier is about to alter the method which it computes or in which it reimburses usual and customary charges made by physicians. Furthermore, the Employer has provided no evidence to show that any district, including Janesville, has included language that it proposes here to prevent the issuance of a remedial order similar to the one issued by the grievance arbitrator in Janesville. The Employer argues that its proposal clarifies the Agreement and indicates to any prospective grievance arbitrators the limit of the Employer's liability.

The Employer's proposal must be viewed in the context of the bargaining history over health insurance and the selection of the carrier. In the 1978-80 Agreement, Article IV, G, 2 provided that:

> Company coverage and costs comparable to W.P.S. or Blue Cross/Blue Shield are to be selected by committee for the Cashton Education Association and approved by the Cashton Board of Education.

In the 1981-82 Master Agreement and in subsequent Agreements including the Agreement which is the subject of this Mediation/Arbitration proceeding, reference to the committee is deleted. The Association argued, and this argument was not contested by the Employer, that the purpose of the change was to provide the Employer with the right to select the carrier.

In light of this bargaining history, should the Employer proposal be adopted, then it would have the sole right to select a carrier, but, it would have no obligation other than to pay the premiums to the carrier. If the carrier's servicing of the health insurance benefit is slow or it appears to deny liability for procedures apparently covered by the underlying contract between the district and the carrier, the Employer is under no obligation other than to pay the premiums. In fact, the Employer correctly suggests in its brief that the Association may have no standing nor may an individual member have any standing to sue the carrier to enforce the underlying contract between the carrier and the District Employer where the Employer pays 100% of the premium. The Arbitrator certainly is not suggesting that the Employer is oblivious or does not care about the quality of service provided by the insurance carrier to its employees. However, under the language of the Agreement, the Employer states that there is no contractual obligation on its part with regard to its employees to have <u>any</u> contact with the carrier with regard to the administration of the health insurance benefit.

The Employer has not demonstrated any need for the inclusion of this new language in this Agreement. The problem it alludes to may be cured through a proposal which may be more narrowly drawn. Finally, the breadth of the proposal places the Employer in a position of selecting a carrier which may save on the cost of administration by refusing to pay benefits, paying those benefits in a slow and reluctant manner or take other steps which may affect the quality of coverage. Through the language of the Agreement, the Employer maintains that its only responsibility vis-a-vis its employees is to pay the premiums. The Arbitrator finds that this proposal is not justified and it provides a substantial negative impact in the final offer of the Employer.

SELECTION OF THE FINAL OFFER

From the discussion above, the Employer's proposal is to be preferred on the salary schedule issue inasmuch as its salary schedule proposal is supported by the criteria-the interests and welfare of the public, as well as, the cost of living. The Association's argument that the cost of living and the interest and welfare of the public are best evidenced by the settlements achieved in comparable school districts, has no validity in this case. Only two of fifteen comparable districts have settled for 1985-86. For the Arbitrator to select five or six secondary comparables to supplement the two primary comparables which have settled would be to make this decision on the basis of the secondary comparables, school districts with significant disimilarities to Cashton. With regard to the comparable criterion, based on the information which the Arbitrator was able to glean from the limited data available, he concludes that the deficiencies inherent in the proposal of the Employer and the Association negate each other. Accordingly, the Arbitrator finds that the Employer proposal is to be preferred on the salary schedule issue.

Although the Association proposal is preferred on mileage, the Arbitrator provides little mileage to this issue in the ultimate decision of which offer is to be preferred.[2]

Finally, the Arbitrator notes in the discussion above, that the Employer's final offer on insurance has a substantial negative impact on the total final offer submitted by the Employer. On balance, therefore, the Arbitrator finds that the total final offer of the Association which contains no proposal which carries with it a subtantial negative impact on its total final offer is to be preferred and included in the parties' Agreement.

A further word on the outcome of this proceeding is necessary. The Arbitrator has selected the final offer of the Association substantially on the basis of the negative impact of the Employer's insurance proposal. Yet, that proposal has no immediate cost impact for the duration of this Agreement. In addition, the Arbitrator recognizes the concern of the Employer that it not be treated as in insurer where it has contracted with a carrier to provide health insurance coverage. However, the breadth of the proposal made by the Employer is such that it could absolve itself of any responsibility even those which may be merely ministerial in nature under its proposal. The record is devoid of any evidence of a need for such proposal and it is devoid of any evidence of any inclination on the part of the Employer to act in manner which is suggested in its proposal. However, its proposal serves to call into question the reliability of the insurance benefits included in the parties stipulation of agreed upon items.

The Med/Arb process is purported to be a substitute for a strike. It attempts to provide a rational process for the resolution of disputes concerning wages, hours and conditions of employment. The final offer process is devised to encourage the parties to narrow their differences. If a settlement is not achieved, the Arbitrator should have before her/him only those substantive issues which are of critical importance to the parties and upon which agreement was not achieved. Under this legislative scheme, a party which leaves to arbitration proposals which are not of critical importance is at risk.

Here, the Employer proposal contains an offer which appears to be peripheral to the salary schedule issue. Had the Employer prevailed on the salary schedule issue by a substantial margin, the negative impact of the insurance proposal would not have been sufficient to tip the balance, in this case. However, although the Employer's proposal on salary is to be preferred,

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2. Pun intended.

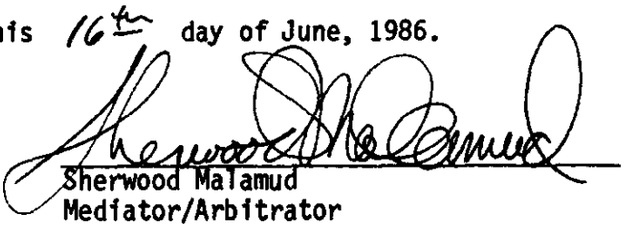
its proposal did contain deficiencies and the preference it enjoys on the salary issue is not overwhelming. Consequently, the substantial negative impact of the insurance proposal is sufficient to tip the balance in favor of the Association's proposal.[3]

On the basis of the above Discussion, the Mediator/Arbitrator issues the following:

AWARD

Based upon the statutory criteria found in Sec. 111.70(4)(cm)7a-h of the Municipal Employment Relations Act, the evidence and arguments of the parties and for the reasons discussed above, the Mediator/Arbitrator selects the final offer of the Cashton Education Association, which is attached hereto, together with the stipulations of the parties to be included in the Agreement between the Cashton School District and the Cashton Education Association.

Dated, at Madison, Wisconsin this 16th day of June, 1986.



Sherwood Malamud
Mediator/Arbitrator

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3. See the decision of this Arbitrator in School District of West Allis-West Milwaukee, (21700-A) 1/85, where the Employer's proposal was selected for inclusion in a Successor Agreement on the basis of the substantial negative impact of a non-economic proposal made by the Union.

CHART 1

1983-84

Name	BA	BA+7	BA Max	BA Lane Max	MA	MA+10	MA Max	MA School Max
Bangor	13,120	15,190	18,460	20,090	14,045	18,230	21,020	21,220
E-K-W	13,675	16,135	17,885	20,785	14,425	18,175	20,935	21,085
Hillsboro	13,370	15,830	18,290	19,710	14,270	17,960	20,420	20,420
Necedah	13,175	15,785	19,265	20,165	14,375	18,290	20,465	20,765
New Lisbon	13,650	16,020	19,575	20,350	14,490	18,270	20,790	21,240
Norwalk	13,400	16,100	18,800	20,150	15,200	19,250	20,600	20,600
Wonewoc	12,905	15,425	18,785	19,745	14,105	17,885	19,985	20,465
Cashton	12,950	15,410	18,690	19,710	14,310	18,000	20,050	20,730
De Soto	13,000	15,460	19,150	19,875	13,850	17,720	20,300	20,725
Ithaca	12,750	15,810	18,360	20,520	13,775	18,734	20,938	20,938
Kickapoo	12,635	15,395	18,615	19,485	13,795	17,935	19,775	19,775
La Farge	12,100	14,380	17,420	18,220	13,300	16,720	18,620	18,620
North Crawford	12,750	15,510	18,270	19,630	14,100	18,420	20,340	20,790
Seneca	12,900	15,450	18,000	19,635	14,600	18,965	20,420	21,695
Wauzeka	12,600	15,270	17,050	18,840	13,975	17,980	19,760	20,710
Weston	12,900	15,996	19,092	19,980	13,800	18,768	20,424	20,868
Average	12,995	15,624	18,468	19,812	14,140	18,220	20,319	20,661

Note: The school districts of Bangor through Wonewoc which appear above Cashton on this chart comprise the Scenic Bluffs Athletic Conference.

The school districts of De Soto through Weston which appear below Cashton on this chart were formerly included in the Scenic Central Conference.

CHART 2

1984-85

Name	BA	BA+7	BA Max	BA Lane Max	MA	MA+10	MA Max	MA School Max
Bangor	Not Settled	Not Settled	Not Settled	Not Settled	Not Settled	Not Settled	Not Settled	Not Settled
E-K-W	14,330	17,090	18,930	21,830	15,080	19,220	21,980	22,130
Hillsboro	14,355	17,013	19,671	21,357	15,555	19,542	22,200	22,220
Necedah	14,135	16,835	20,435	21,395	15,415	19,465	21,715	22,035
New Lisbon	14,750	17,300	21,125	21,685	15,650	19,745	22,475	22,965
Norwalk	14,335	17,275	20,215	21,685	16,295	20,705	22,175	22,175
Wonewoc	13,855	16,435	19,875	20,835	15,055	18,925	21,075	21,555
Cashton	13,650	16,200	19,600	20,635	15,030	18,555	20,980	21,670
De Soto	13,605	16,425	20,655	20,425	14,835	19,335	22,335	23,155
Ithaca	13,750	17,050	19,800	22,268	14,975	20,366	22,762	22,762
Kickapoo	13,745	16,655	20,050	21,100	15,145	19,510	21,450	21,450
La Farge	13,200	15,780	19,220	20,270	14,775	18,645	20,795	21,320
North Crawford	13,725	16,605	19,485	21,485	15,325	20,275	22,475	23,725
Seneca	Not Settled	Not Settled	Not Settled	Not Settled	Not Settled	Not Settled	Not Settled	Not Settled
Wauzeka	13,600	16,480	18,400	20,500	15,145	19,600	21,580	22,760
Weston	13,700	16,988	20,276	21,670	15,140	20,590	22,407	24,627
Average w/o Cashton	13,930	16,764	19,857	21,270	16,417	19,686	21,956	22,528

Note: The school districts of Bangor through Wonewoc which appear above Cashton on this chart comprise the Scenic Bluffs Athletic Conference.

The school districts of De Soto through Weston which appear below Cashton on this chart were formerly included in the Scenic Central Conference.

CHART 3

1985-86

Settled Contracts

Name	BA	BA+7	BA Max	BA Lane Max	MA	MA+10	MA Max	MA School Max
North Crawford	14,730	17,910	21,090	23,600	16,680	22,440	25,000	26,400
LaFarge	14,250	17,160	21,040	22,090	15,825	20,190	22,615	23,140
Cashton Assoc.	14,830	17,710	21,550	22,690	16,350	20,670	23,070	23,830
Cashton Dist.	15,000	17,550	20,950	21,985	16,380	20,205	22,330	23,020

CHART 4

Comparison of Increases at the Benchmarks
for the Average of the Comparables and Cashton

	Increase from 1983-84 to 1984-85		Increase from 1984-85 to 1985-86		
	Avg.	Cashton	Dist.	Cashton Assoc.	Average
BA	935	700	1,350	1,180	Data Unavailable
BA+7	1,140	790	1,350	1,510	"
BA Max	1,389	910	1,350	1,950	"
BA Lane Max	1,374	925	1,350	2,055	"
MA	2,277	720	1,350	1,320	"
MA+10	1,466	555	1,650	2,115	"
MA Max	1,637	930	1,350	2,090	"
School Max Schedule	1,867	940	1,350	2,160	"

ASSOCIATION EXHIBIT NO. 1

Name of Case: Cashton School District

The following, or the attachment hereto, constitutes our final offer for the purposes of mediation-arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me.

Sept 26, 1985 (Date)

Harold Roethl (Representative)

On Behalf of: Cashton Education Association

ASSOCIATION EXHIBIT NO. 2

Proposed Schedule ==== 85-6

Steps	BA	BA+8	BA+16	BA+24	MA	MA+8	MA+16
1	14830	15210	15590	15970	16350	16730	17110
2	15310	15690	16070	16450	16830	17210	17590
3	15790	16170	16550	16930	17310	17690	18070
4	16270	16650	17030	17410	17790	18170	18550
5	16750	17130	17510	17890	18270	18650	19030
6	17230	17610	17990	18370	18750	19130	19510
7	17710	18090	18470	18850	19230	19610	19990
8	18190	18570	18950	19330	19710	20090	20470
9	18670	19050	19430	19810	20190	20570	20950
10	19150	19530	19910	20290	20670	21050	21430
11	19630	20010	20390	20770	21150	21530	21910
12	20110	20490	20870	21250	21630	22010	22390
13	20590	20970	21350	21730	22110	22490	22870
14	21070	21450	21830	22210	22590	22970	23350
15	21550	21930	22310	22690	23070	23450	23830

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ASSOCIATION EXHIBIT NO. 3

Head Coach	
Basketball-Football-Wrestling-Gymnast	1387
Baseball-Track-Volleyball	937
Assistant Coach	
Football	921
Basketball	975
Wrestling-Gymnastics	856
Baseball-Track-Volleyball	542
Basketball-Jr. High	1084
School Musical	623
School Play Director	455
Forensics	396
One-Act Play	195
School Annual	607
School Newspaper	282
Cheerleading Advisor	157
Band Director (During Regular School Yr)	634
Band Director (Summer Band)	2546
Class Advisors (9 & 10)	152
Class Advisors (11 & 12)	233
F.H.A. & F.F.A. Advisors	141
Summer Agriculture Program	2763
Ticket Sellers (Per Hour)	5.58
Chaperoning (Per Hour)	5.58
Extra Class (Per Class)	964
Mileage (Per Mile)	.23

DR